

EX PARTE ORAL HEARING

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MCDERMOTT, WILL & EMERY

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September 29, 1995

VIA HAND DELIVERY

Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In re Amendment of Part 90 of the Commission's Rules
to Facilitate Future Development of SMR Systems in
the 800 MHz Frequency Band and Implementation of
Section 309(j) of the Communications Act -
Competitive Bidding 800 MHz SMR;
PR Docket No. 93-144, PP Docket No. 93-253

WRITTEN EX PARTE PRESENTATION

Dear Sir/Madam:

On behalf of Baltimore Gas and Electric Company, Central
and South West Services, Inc., Consumers Power Company,
Delmarva Power Company, Entergy Services, Inc., Indianapolis
Power and Light Company, Omaha Public Power District, and Union
Electric Company, the law firm of McDermott Will and Emery is
pleased to submit the following written ex parte presentation
in the above-captioned proceeding. In accordance with
Section 1.1206 of the Commission's rules, we are enclosing two
copies of the ex parte presentation for inclusion in the record
of the above-captioned proceeding.

Very truly yours,

Shirley S. Fujimoto

Shirley S. Fujimoto

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Susan Ness
Commissioner Rachelle B. Chong
Regina Keeney, Chief, Wireless Telecommunications Bureau
Rosalind K. Allen, Chief, Commercial Wireless Division,
Wireless Telecommunications Bureau
Sally J. Novak, Acting Deputy Chief, Commercial Wireless
Division, Wireless Telecommunications Bureau
D'wana Speight, Acting Deputy Chief, Legal Branch,
Wireless Telecommunications Bureau

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In The Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to Facilitate) RM-8117, RM-8030
Future Development of SMR Systems) RM-8029
in the 800 MHz Frequency Band)

and

Implementation of Section 309(j))
of the Communications Act -) PP Docket No. 93-253
Competitive Bidding)
800 MHz SMR)

WRITTEN EX PARTE PRESENTATION

OF

**BALTIMORE GAS AND ELECTRIC COMPANY, CENTRAL AND SOUTH
WEST SERVICES, INC., CONSUMERS POWER COMPANY,
DELMARVA POWER COMPANY, ENTERGY SERVICES, INC.,
INDIANAPOLIS POWER AND LIGHT COMPANY,
OMAHA PUBLIC POWER DISTRICT, AND UNION ELECTRIC COMPANY**

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Its Attorneys

Date: September 29, 1995

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EXECUTIVE SUMMARY

The Joint Parties, a group of independent utilities, strongly oppose the Commission's proposal to re-allocate channels from the 800 MHz General Category. Collectively, the Joint Parties are concerned that the proposal ignores the presence of existing utilities and other PMRS licensees. The Joint Parties have grave concerns regarding the possible impact on their 800 MHz land mobile radio systems. The re-allocation of the General Category will not serve the public interest, and will further restrict the abilities of PMRS entities to expand their systems in accordance with current Commission rules.

In the event the Commission elects to re-allocate the General Category, the Commission must process all pending applications for General Category spectrum, and must grandfather all current and future licensees in the General Category on an indefinite basis. Mandatory relocation is not a feasible nor a cost-effective option given the current operational status of the great majority of these systems and the extreme shortage of spectrum. Of equal importance, the Commission must allow these grandfathered licensees sufficient flexibility to relocate their General Category channels in reevaluating and fine-tuning these multi-million dollar, wide-area systems.

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and		
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Competitive Bidding)	
800 MHz SMR)	

WRITTEN EX PARTE PRESENTATION
OF
BALTIMORE GAS AND ELECTRIC COMPANY, CENTRAL AND SOUTH
WEST SERVICES, INC., CONSUMERS POWER COMPANY,
DELMARVA POWER COMPANY, ENTERGY SERVICES, INC.,
INDIANAPOLIS POWER AND LIGHT COMPANY,
OMAHA PUBLIC POWER DISTRICT, AND UNION ELECTRIC COMPANY

Baltimore Gas and Electric Company ("BGE"), Central and South West Services, Inc. ("CSW"), Consumers Power Company ("Consumers"), Delmarva Power Company ("Delmarva"), Entergy Services, Inc. ("Entergy"), Indianapolis Power and Light Company ("IPL"), Omaha Public Power District ("OPPD"), and Union Electric Company ("Union") (collectively "the Joint Parties"), through their undersigned counsel and pursuant to Section 1.1206 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.1206, hereby submit this written ex parte presentation

in connection with the Commission's Further Notice of Proposed Rule Making ("FNPRM") issued in the above-captioned proceeding.^{1/}

I. Statement of Interest

1. The Joint Parties are a group of independent electric and gas utilities located across the United States. Individually, the utilities hold numerous authorizations for land mobile radio facilities in the 800 MHz frequency band. The Joint Parties have decided to file this ex parte presentation together to express their collective objection to the Commission's recently expressed proposal to re-allocate the 800 MHz General Category to the Specialized Mobile Radio ("SMR") Category and to subsequently auction these General Category frequencies. While some of these parties have not previously participated in this proceeding, this issue is of such grave concern to the Joint Parties that they have filed this pleading prior to a formal announcement of the Commission's proposed rules addressing the General Category re-allocation.^{2/}

^{1/} 59 Fed. Reg. 60,111 (November 22, 1994). The Commission expressly requested interested parties to file ex parte presentations during its September 18, 1995 meeting to discuss the disposition of the issues presented in the FNPRM (Public Notice, September 12, 1995, Report No. WT 95-23).

^{2/} Entergy did participate in this proceeding, filing Reply Comments on March 1, 1995.

2. Energy utility operations are critical to the normal functioning of society throughout the country. For the benefit of both customers and its employees, utilities must conduct operations in an exceptionally safe and efficient manner. These conditions require utilities to maintain as reliable a communications system as possible. To address their land mobile radio communications needs, the Joint Parties have implemented wide-area, 800 MHz land mobile radio systems. The Joint Parties recognize that their ability to maintain viable 800 MHz systems and to meet both internal and customer service demands could be seriously compromised by the Commission's recent proposal to re-allocate the General Category for SMR activity. Moreover, the Commission's proposal would further exacerbate the extreme shortage of spectrum for utilities. The Joint Parties strongly oppose a Commission re-allocation of the General Category and urge the Commission to consider their interests in regulating the General Category in the future.

II. Discussion

A. The Re-Allocation of the General Category Would Adversely Impact the Joint Parties and Other PMRS Licensees.

3. Many Private Mobile Radio Service ("PMRS") licensees have relied on the General Category as either the basis for or a significant supplement to their 800 MHz PMRS

communications systems. In addition to utility use of these channels, in its Comments in this proceeding, the Association of Public-Safety Communications Officers-International ("APCO") noted the extensive use of the General Category by public safety entities. In fact, APCO reported that 300,000 public safety radio units are licensed on General Category channels to over 450 state and local government public safety agencies.^{3/} Moreover, BGE, CSW, Consumers, Delmarva, Entergy and Union all will be directly affected by the Commission's proposed General Category re-allocation.

4. BGE provides electric service to 1.1 million customers and natural gas service to 538,000 customers throughout Baltimore and central Maryland. This heavily populated 2,500 square mile territory demands reliable communications. With this in mind, BGE has developed an 800 MHz network to improve customer service and to enhance emergency responsiveness in responding to power outages, downed power lines, natural gas leaks, and other severe situations. Each component of the network contains at least one General Category channel due to the unavailability of spectrum from other categories. To re-allocate this spectrum would deprive BGE of this vital communications

^{3/} APCO Comments at 3.

capacity and could severely impact storm restoration and gas and other emergency services.

5. Under the CSW umbrella, four electric companies deliver electricity to 1.2 million customers across approximately 158,000 square miles in Louisiana, Texas, and Oklahoma. While CSW's 800 MHz land mobile radio system currently is licensed primarily on Industrial/Land Transportation ("I/LT") spectrum, CSW has applications pending at the Commission for General Category spectrum. This expansion is critical to accommodate increased traffic on the CSW system. In this regard, CSW urges the Commission to allow the continued processing of these applications during the pendency of this proceeding. Without the General Category, the \$37 million CSW land mobile radio system may be unable to grow to meet increasing internal and customer demands.

6. Consumers is the largest energy utility in the State of Michigan. It provides electricity and/or natural gas to 2.3 million people in the 68 counties in the lower peninsula, totalling approximately 31,000 square miles. In an effort to better serve its customers, Consumers is in the multi-year process of implementing an 800 MHz land mobile radio system throughout its entire service territory. Due to channel restrictions in the Canadian Border areas,

Consumers has licensed a large block of spectrum from the 851.0000 MHz to 854.7375 MHz range in Detroit, which is located in Canadian Border Region 3. Frequencies within this Region are allocated to different Radio Service Categories than the Category assignments in the non-border Region. Consequently, as Consumers has attempted to re-use these same frequencies outside of Region 3 and to maximize spectrum efficiency, it has licensed a number of frequencies from the General Category. This capacity is critical to Consumers' communications needs, and, as a result, Consumers strongly opposes re-allocation of the General Category spectrum.

7. Delmarva provides electric services to 400,000 customers across 6,000 square miles including most of the Delaware-Maryland-Virginia Peninsula. Delmarva depends heavily upon reliable and effective mobile radio communications including its two conventional 800 MHz systems and an 800 MHz trunked voice system. One five-channel, single-site conventional radio system serves its Northern Division area which includes approximately 50 percent of the customers in its territory. A second conventional system is Delmarva's multi-site 800 MHz conventional mobile data dispatch system. Both of these conventional systems include General Category channels without which, the systems would be decimated. Delmarva

also recognizes that the re-allocation could substantially impair its ability to expand its trunked voice system, which is currently licensed on non-General Category 800 MHz channels.

8. Entergy is one of the largest electric utility holding companies in the country covering Louisiana, almost all of Arkansas, a portion of Texas and the western half of Mississippi. Under its umbrella, operating companies operate an integrated electric utility system which serves over 2.3 million customers. Entergy initially secured General Category channels in the New Orleans area during the early licensing of its wide-area system as a result of spectrum congestion in the other 800 MHz spectrum categories. In an effort to implement an appropriate channel re-use scheme throughout its service territory, Entergy has licensed or is in the processing of licensing these General Category channels across its territory. The viability of the Entergy system hinges on its ability to re-use this group of General Category channels. Re-allocation of the General Category spectrum would result in the complete loss of this core group of channels and would devastate Entergy's 800 MHz land mobile radio system.

9. Union is an electric and gas utility that provides power and gas to over 1.2 million customers in St. Louis and

across the state of Missouri. Union has licensed and constructed an 800 MHz land mobile radio system which spans its 25,000 square mile service territory. The system is devoted primarily to communication between Union's headquarters and work crews in the field. Union has licensed multiple General Category channels at 13 of its 56 sites. In re-allocating the General Category, the Commission would cripple Union's entire 800 MHz system. In removing even a small piece of spectrum from the system, Union's highly efficient system would be compromised.

10. The Joint Parties urge the Commission to preserve the General Category for its original intended use. As demonstrated above, utilities have relied on the Commission's rules to license General Category spectrum in support of their critical 800 MHz land mobile radio systems. It is clear that any change in the Commission's current rules and regulations regarding the General Category will have a severe impact on the ability of these utilities and other PMRS licensees (including the Public Safety community) to serve their customers, the general public.

11. IPL and OPPD, while not presently licensed for General Category spectrum, also recognize the devastating effect of the General Category re-allocation on utilities and PMRS entities. IPL provides electric service to 400,000

customers primarily in Marion County, Indiana. IPL is in the process of building out an 800 MHz land mobile radio communications network which will support its customer service and dispatch efforts. However, IPL is encountering significant problems in securing enough spectrum to accommodate system capacity. While IPL had hoped to secure additional spectrum from the Public Safety pool, the freeze on inter-category sharing likely will force IPL to turn to the General Category to meet its spectrum needs. With the re-allocation, however, IPL may be unable to properly expand its 800 MHz system.

12. OPPD is a government agency engaged in the provision of electric utility services to 250,000 customers. Its service territory covers a portion of eastern Nebraska which includes and surrounds Omaha, the largest city in the state. In order to meet its service and customer demands, OPPD is in the multi-year process of constructing a trunked 800 MHz simulcast system. While OPPD presently is not licensed for General Category channels, it recognizes the impact the Commission's proposal will have on its operations and on the operations of all utilities, and, accordingly, opposes the re-allocation of the General Category spectrum.

13. Over the past several years, the Commission has systematically foreclosed the access of utilities and other

Industrial/Land Transportation entities to the other 800 MHz spectrum categories, including the SMR Category (280 channels) and the Public Safety Category (70 channels). The loss of the General Category (150 channels) will further restrain these state-of-the-art, wide-area 800 MHz PMRS systems.

14. Finally, in re-allocating the General Category spectrum for SMR auctions, the Commission will essentially "freeze" the ability of the Joint Parties and other similarly situated PMRS entities to modify and amend, even slightly, their existing 800 MHz systems to the extent they include General Category spectrum. The Joint Parties are quite aware that in other instances, e.g., the freeze on the upper 200 SMR channels, proposed auctions have almost crippled licensees in their ability to expand their systems in any way. The inability to modify and expand 800 MHz systems would be devastating especially for utilities. In building out these complex systems, re-engineering of sites is inevitable to ensure adequate signal coverage. Moreover, the Joint Parties understand that the General Category may be allocated for auction to small business SMRs only. Consequently, even if the Joint Parties were interested in buying back the spectrum they may be forced to give up, they likely would be unable to participate at auction. These

additional consequences of re-allocation may essentially end the licensing efforts of certain PMRS entities.

- B. If the Commission Proceeds with Re-Allocation, It Must Grandfather Existing General Category Licensees Indefinitely and Provide Them Sufficient Flexibility to Relocate.

15. In the event the Commission elects to re-allocate the General Category to SMR, the Joint Parties strongly urge the Commission to continue processing of applications currently pending at the Commission for General Category spectrum and to then grandfather General Category licensees indefinitely. Additionally, the Commission must recognize that even in grandfathering these licensees, the Commission still may substantially impair the flexibility of licensees to fine-tune their 800 systems.

16. Most importantly, grandfathering must be indefinite and must allow for at least minor modifications to system parameters; mandatory relocation is not a viable option. A temporary grandfather period will not provide the necessary relief these utilities and PMRS licensees require. By mandating the relocation of General Category spectrum, multi-million dollar land mobile radio systems would be gutted, and the efficacy of these critical 800 MHz communications networks would be seriously jeopardized. The Commission must recognize that in most situations, PMRS

systems on General Category channels already are operational. To remove channels from a system simply because they are from the General Category would be very costly to the licensee and may result in the loss of capacity at a given site. These channels are not easily interchangeable; mobiles are programmed, channel groups are established and repeaters have been tuned. The loss of even one channel would create a substantial hardship for these PMRS licensees -- the complete elimination of a block of 150 channels would be devastating.

17. Grandfathered licensees must be allowed significant flexibility to continue to relocate and fine-tune their 800 MHz systems at those sites containing General Category. Allowing a licensee to relocate within a 40/22 dBu contour is not sufficient flexibility. The Joint Parties urge the Commission to develop a suitable procedure that will allow grandfathered licensees the option to relocate General Category channels from their present locations. The Joint Parties anticipate filing Comments on this matter and providing the Commission with additional guidance once the Commission has issued its proposed rules. Finally, the Joint Parties urge the Commission to allow grandfathered licensees to add new sites using General Category channels provided the new site does not substantially extend their existing coverage area.

18. These proposals are not unreasonable. The Joint Parties and other PMRS entities have relied on the Commission's rules in licensing spectrum from the General Category. They must be allowed flexibility to further develop the systems, including their use of General Category spectrum. Moreover, many affected entities, including several of the Joint Parties, have, in accordance with the Commission's rules, secured slow growth status for the installation of their 800 MHz systems. Yet, the Joint Parties understand that the Commission may elect to cancel or shorten existing slow growth schedules that include General Category channels. Utilities of this size must move forward at a deliberate pace; construction progress is limited by ratepayer concerns, capital budget committee restrictions and state utility commission considerations. The Commission cannot turn its back on these PMRS licensees and radically change the General Category and slow growth rules in midstream. The Joint Parties have relied on a level of administrative certainty in developing, licensing, and constructing their systems. To deprive them of this certainty, which will affect a significant portion of their systems, does not serve the public interest.

Conclusion

19. The Commission cannot ignore the communications needs of the Joint Parties and other PMRS licensees in developing a new licensing scheme for 800 MHz SMRs. The Commission must remain mindful of these interests and realize that it cannot re-allocate the General Category spectrum to SMRs on an exclusive basis. If the Commission insists on re-allocating the General Category, pending applications for General Category spectrum must continue to be processed, licensees then must be grandfathered indefinitely, and the Commission must allow grandfathered licensees an appropriate level of flexibility as discussed above.

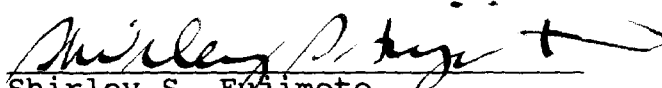
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WHEREFORE, THE PREMISES CONSIDERED, Baltimore Gas and Electric Company, Central and South West Services, Inc., Consumers Power Company, Delmarva Power Company, Entergy Services, Inc., Indianapolis Power and Light Company, Omaha Public Power District, and Union Electric Company urge the Commission to consider this ex parte presentation and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

**BALTIMORE GAS AND ELECTRIC COMPANY,
CENTRAL AND SOUTH WEST SERVICES, INC.,
CONSUMERS POWER COMPANY,
DELMARVA POWER COMPANY,
ENTERGY SERVICES, INC.,
INDIANAPOLIS POWER AND LIGHT COMPANY,
OMAHA PUBLIC POWER DISTRICT, AND
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